

EXHIBIT 68

HALASZ
Reporting & Video

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 RICHMOND DIVISION

4 CIRCUIT CITY STORES, INC., et al.,

5 Debtors,

6 CASE NO. 08-35653 (KRH)

7 ALFRED H. SIEGEL, AS TRUSTEE OF
8 THE CIRCUIT CITY STORES, INC.
9 LIQUIDATING TRUST,

10 Plaintiff,

11 v.

12 Adv. Pro. No. 10-03600-KRH

13 SONY ELECTRONICS, INC., aka SONY
14 AND CREDIT SUISSE LOAN FUNDING, LLC.,

15 Defendant.

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19 DEPOSITION OF BRANDI FOSE - DAY 2

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23

24 July 21, 2014

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26 Richmond, Virginia

27

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8

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23 21 7-page vendor package for 90772 106

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25

1 BRANDI FOSE

2 was sworn and deposed as follows:

3 DIRECT EXAMINATION

4 BY MS. CHANG:

5 Q Good morning, Ms. Fose. My name is
6 Emily Chang. And we've not met before today and so I
7 just wanted to introduce myself. I know you've met my
8 colleague Andy Goldwater who deposed you last time.
9 And I'm just going to follow up on a couple things
10 that he asked you about last time, but mostly I'm
11 going to ask about the declaration that you recently
12 submitted in connection with the Trust's motion for
13 partial summary judgment.

14 A Okay.

15 Q So, since I've never deposed you before,
16 if it's okay with you I'd like to go through a couple
17 really quick just basics so that we're on the same
18 page --

19 A Sure.

20 O -- as we go through the deposition.

21 So, I see already that you're answering
22 verbally which is great. Because I assume you've been
23 deposed before?

24 A Yes.

25 O Actually I know you've been deposed

1 before. So, you know the importance of giving an oral
2 answer. So, I really appreciate that.

3 A Sure.

4 Q I'm going to ask you a series of
5 questions and just as with every prior deposition that
6 you've ever done, I just ask that you give a full and
7 complete answer to every question to the best of your
8 knowledge.

9 A Okay.

10 Q And to the best of your recollection.

11 A Okay.

12 Q And if I state a question in a way that
13 you don't understand, just let me know and I will
14 rephrase.

15 A Okay.

16 Q So, if you don't understand a question,
17 do you agree to just let me know?

18 A Yes.

19 Q And if you later remember information
20 that you hadn't included in a previous answer and you
21 say hey, now I remember, I need to add, will you just
22 let me know?

23 A Sure.

24 Q And if you need to speak to
25 Mr. Feinstein at any time, that's totally fine. My

1 only request is that if a question is pending, that
2 you answer the question first and then talk to your
3 attorney.

4 A Okay.

5 Q And like I said, if you need a break at
6 any time just let me know.

7 A Okay.

8 Q A couple final questions. Are you
9 taking any sort of medication or drugs that would
10 impede your ability to remember answers to my
11 questions?

12 A No.

13 Q Are you feeling ill today other than the
14 allergies?

15 A No.

16 Q And is there any reason why you can't
17 give full and complete answers to my questions today?

18 A No.

19 Q Great. Thank you very much.

20 A Sure.

21 Q So, just quickly following up on the
22 last deposition, and I know that was a little while
23 ago so I'm going to briefly remind you the part that
24 I'm referring to. Do you remember that Mr. Goldwater
25 asked you a series of questions about Circuit City's

1 accounts receivable claim?

2 A Yes.

3 Q I imagine it was quite a long list of
4 questions.

5 And I understand that you recently
6 submitted a declaration in support of the Trust's
7 motion for partial summary judgment; is that right?

8 A Yes.

9 Q And Exhibit A to that declaration is a
10 full and complete list of all of the Trust's accounts
11 receivable items that it alleges Sony owes; is that
12 correct?

13 A Yes.

14 MS. CHANG: I'm going to ask will you
15 please mark this as Sony Exhibit 9?

16

17 (An eight-page Declaration of Brandi
18 Fose in Support of Motion of Plaintiff
19 Trustee for Partial Summary Adjudication
20 of Claims II, V and VIII of its Second
21 Amended Complaint Herein, and attached
22 Exhibits A-E, was marked Sony Exhibit
23 Number 9.)

24

25

1 BY MS. CHANG:

2 Q So, Exhibit 9 is just a copy of your
3 declaration as well as Exhibit A. And Exhibit A is
4 really the heart of what I'm going to be referring to
5 today.

6 MR. FEINSTEIN: Can we go off the record
7 for a second?

8 (Off the record in place.)

9 MS. CHANG: We can go back on the record.

10 BY MS. CHANG:

11 Q Looking at Sony Exhibit 9, this is now
12 Sony Exhibit 9, Exhibit A to Sony Exhibit 9. All of
13 the chargebacks that the Trust is claiming are listed
14 here; is that right?

15 A Correct.

16 Q And when I refer to chargebacks
17 throughout this entire deposition, all I'm going to be
18 referring to are the items here. I realize there are
19 other chargebacks in the world of Sony and Circuit
20 City but I'm only going to be referring to the ones at
21 issue here. Is that okay?

22 A Sure.

23 Q So, revisiting your deposition from June
24 25th of 2014 --

25 MS. CHANG: And, counsel, I'm on Page 18

1 if you want to follow along.

2 BY MS. CHANG:

3 Q -- you had mentioned that you worked at
4 Circuit City in the vendor funding area beginning
5 sometime in January of 2009. Is that right?

6 A Correct.

7 Q And you said that in April or Mayish of
8 2009, we, I think meaning Circuit City, got a
9 spreadsheet back from them, meaning Sony, that
10 indicated certain items that they felt were not valid
11 or disputed or that they needed additional information
12 on. Do you remember giving that testimony?

13 A Yes.

14 Q And I just want to ask with respect
15 to -- so, it sounds like there's two categories of
16 chargebacks. There's chargebacks that Sony said were
17 not valid or Sony said were disputed, right?

18 A Is that a question?

19 Q Yes.

20 A Yes.

21 Q Sorry. And it sounds like there's
22 another category of chargebacks where Sony said it
23 needed more information?

24 A Yes.

25 Q So, just taking each category one at a

1 time. First with respect to the chargebacks that Sony
2 told you in April or May of 2010 that Sony disputed,
3 with respect to those, did you do anything to
4 investigate those chargebacks?

5 A I believe that I commented back in the
6 spreadsheet if I had follow-up questions and asked
7 them to provide additional information back to me. In
8 normal course just to say that you dispute something
9 would not really be enough for Accounting to try to
10 reconcile. There needs to be more dialogue and
11 information exchange.

12 Q Did you submit a copy of that, your
13 responses, to Tim and Alan or to Sony that you're just
14 referring to?

15 A Yes.

16 Q Was that part of discovery? Was that
17 submitted to Sony as part of discovery?

18 A The spreadsheet?

19 Q Whatever response you sent back to Sony.

20 MR. FEINSTEIN: Objection. There was no
21 litigation pending at the time. This lawsuit was
22 begun in November of 2010.

23 MS. CHANG: So, it has not been produced.

24 MR. FEINSTEIN: No, no, no. Maybe I
25 misunderstood the question. I thought you said was

1 this submitted then as part of discovery. My response
2 was there was no lawsuit then.

3 MS. CHANG: Oh, no. I'm sorry. I should
4 rephrase my question.

5 BY MS. CHANG:

6 Q As part of discovery in this action,
7 Sony versus The Liquidating Trust, has your response
8 to Sony been produced to Sony as part of the Trust
9 discovery?

10 A That's a good question. I'm not sure to
11 be honest. I believe that it would have been as in
12 response to any of the interrogatories. But, I can't
13 say for sure.

14 Q So, just so I make sure I understand,
15 with respect to items that Sony said it disputed, you
16 wrote back and said give me information as to why you
17 dispute it?

18 A Correct.

19 Q Did you get responses back from --

20 A No.

21 Q -- Sony?

22 MR. FEINSTEIN: Let her finish her
23 question.

24 A Sorry.

25

1 BY MS. CHANG:

2 Q And who at Sony had you sent your
3 responses to?

4 A Tim Griebert I believe was his name.

5 Q Anyone else?

6 A Alan. But, once again, I can't remember
7 his last name.

8 Q And did you respond with respect to
9 every single chargeback that Sony said it disputed?

10 A Yes.

11 Q So, after that, after you did not
12 receive a response from Sony, is it fair to say that
13 those chargebacks remained in dispute?

14 MR. FEINSTEIN: Objection.

15 A I can't speak to whether they felt they
16 remained in dispute.

17 BY MS. CHANG:

18 Q Did you feel that they remained in
19 dispute?

20 A Sure.

21 Q With respect to the chargebacks that
22 Sony asked for more information on, what did you do
23 with respect to those?

24 A I re-sent them the chargeback package.

25 Q And when you say chargeback package are

1 you referring to the vendor package that you discussed
2 in your declaration?

3 A Yes.

4 Q With respect to the vendor packages is
5 it the case that every single vendor package is in the
6 six binders referenced in your declaration?

7 A Yes.

8 Q And when you sent back documentation,
9 when you sent back the vendor packages to Sony in
10 response to their request for more information, what
11 happened next?

12 A From what I remember, I sent follow-up
13 emails asking if they needed additional information.
14 And it basically just went silent, as in they didn't
15 respond.

16 Q How many times did you follow up with
17 Tim and Alan with respect to the fact that you had
18 sent additional documentation?

19 A Oh, I don't recall specifically how many
20 times.

21 Q Would you say it was more than once?

22 A Probably.

23 Q With respect to -- since you did not
24 receive a response from Tim and Alan with respect to
25 chargebacks for which they requested more information,

1 did you consider those particular chargebacks to be
2 disputed by Sony?

3 A No. I felt like if there were disputes,
4 they should have followed up.

5 Q And is it your -- was it your
6 understanding that everything in the vendor packages
7 that you submitted to Sony was sufficient to prove the
8 validity of the respective chargeback?

9 A Yes.

10 Q So, turning away from your prior
11 testimony and moving on to your declaration, I just
12 have a few questions about that. You mentioned in
13 Paragraph 3 of your declaration that in January of
14 2009 you took over supervision of the Vendor Funded
15 Accounting Group. Do you remember what day you took
16 over that position? It just says January of '09, so I
17 wasn't sure.

18 A No, I don't remember which day
19 specifically.

20 Q Do you remember if it was the beginning
21 or the end of the month?

22 A It was after we announced liquidation.

23 Q And what date did you announce
24 liquidation?

25 A January 16th, 2009.

1 Q So, if it was after you -- if it was
2 after Circuit City announced liquidation, is it
3 accurate that Circuit City did not purchase any
4 products after the announcement of liquidation?

5 A We actually did purchase products after
6 we announced liquidation.

7 Q Do you know about the volume of products
8 that Circuit City purchased?

9 A With respect to Circuit City and Sony
10 specifically?

11 Q Yes.

12 A I don't recall off the top of my head.
13 It's something I could get.

14 Q But, you know for sure that Circuit City
15 purchased additional product from Sony after the
16 liquidation announcement?

17 A Yes.

18 Q Did the Trust submit records of the
19 purchase of those goods from Sony after the
20 liquidation as part of discovery in this case?

21 A I don't recall. You know, I just am --
22 I'm having trouble remembering everything that was
23 asked for in discovery. Certainly if it was requested
24 then we would have. We provided everything that was
25 asked of us.

1 Q After you took over supervision of the
2 Vendor Funded Accounting Group, did you do anything
3 with respect -- that's a poorly phrased question.

4 I understand that as part of the
5 chargeback process of creating and evaluating and
6 auditing, there are sort of many hands in the pot.
7 And what I'm interested in knowing is after you became
8 the supervisor of the Vendor Funded Accounting Group
9 did you yourself ever create a chargeback claim?

10 A No.

11 Q Did you ever approve any of the
12 chargebacks --

13 A No.

14 Q -- at issue here?

15 Did you ever finalize any of the
16 chargebacks at issue here?

17 A No.

18 Q Did you ever review any of the
19 chargebacks at issue here?

20 A The review would have been more once the
21 chargebacks were already completed, more from the
22 standpoint of insuring that from an accounting
23 perspective everything that had been in what we called
24 a draft state, so within our VMA system, that it had
25 been finalized and entered into the books and records

1 as a receivable. But, not at the individual
2 chargeback level. If that makes sense.

3 Q Can you explain a little further? I'm
4 not sure I fully understand what exactly you did.

5 A Sure. One thing I want to clarify is
6 that I supervised the group. I wasn't the supervisor.

7 Q Oh. Okay.

8 A Does that make sense?

9 Q What's the distinction?

10 A There was someone who was the title as
11 the supervisor. I just took over the role of -- I
12 didn't get a new title, but they became a part of my
13 responsibility. So, I would have been higher than the
14 supervisor in that department.

15 Q Okay.

16 A So, that person would have been more
17 into the details of looking at the individual
18 chargebacks.

19 Q Who is that?

20 A That was Greg Lambert.

21 COURT REPORTER: I'm sorry?

22 A Greg. G-r-e-g. Lambert.

23 L-a-m-b-e-r-t.

24 BY MS. CHANG:

25 Q So, Greg reported to you?

1 A Yes.

2 Q So, going back to I think you were going
3 to clarify what exactly you meant by what you yourself
4 were doing.

5 A Right. So, because one of the main
6 things that I was tasked with when I took over the
7 responsibility was insuring that we got all of the
8 billing completed and all of the chargebacks completed
9 and on the books and records, what we would do or what
10 I did, instead of looking at individual chargebacks
11 was to look at all of the chargebacks that were in VMA
12 in a draft state. And then ultimately we would be
13 looking to insure that each one of those got worked,
14 documents were obtained, and that they were approved
15 and ultimately they became a receivable through being
16 the, you know, the completion and approval process. I
17 didn't -- I wasn't directly involved in the approval
18 process. It was more at a high level just making sure
19 that those tasks were completed. If Greg had any
20 issue with a chargeback or a question, he may come to
21 me. But, there's none that I recall specifically that
22 we had an issue with. He generally would have
23 resolved that with the buyer.

24 Q Okay. What are the types of issues that
25 he would have resolved with the buyer to your

1 knowledge?

2 A Just if there was something in draft
3 that hadn't continued to go through the process, they
4 hadn't finalized the chargeback or we didn't have the
5 documentation yet, he would reach out to the buyer to
6 say hey, this is in draft according to the dates, just
7 as an example. It looks like we would place this ad
8 on X date. I need you to send over the support so
9 that we can go ahead and bill the vendor. And once
10 that information was obtained if it, you know, from
11 his perspective it looked like we had done what we
12 were supposed to do, then he would have completed the
13 chargeback and approved it.

14 Q I assume -- well, I don't want to
15 assume. Let me ask. As part of your role in
16 supervising, overseeing the accounting of all of these
17 chargebacks as receivables, obviously Circuit City
18 wants to make sure that it gets everything that it's
19 due. Did your job include making sure that vendor
20 packages were actually sent to Sony?

21 A Yes.

22 Q And how did you do that?

23 A Similar process. Because anything that
24 was in draft and then ultimately was completed, Greg
25 had -- we had a group of billers that were let go when

1 the liquidation was announced. And you probably saw
2 my deposition transcript, I spoke about this before,
3 but I was responsible for calling those people back
4 into the office and having them actually create the
5 bills and submit them to the vendors. Not just Sony.
6 Sony just happened to be one of them. So, it was my
7 responsibility to insure chargebacks were taken out of
8 the draft state and completed if they were valid and
9 then also that they were ultimately billed to the
10 vendors.

11 Q Did you actually see the vendor packages
12 go out?

13 A I saw some of them, sure. I didn't
14 oversee every individual one because there were
15 several billers and Greg really oversaw more of that
16 process because that was more just a day-to-day detail
17 process. But, we have I'm sure in the production
18 produced emails that are from our billers to Sony with
19 the vendor packages and the billing.

20 Q Those were sent by -- were those sent by
21 email?

22 A Typically, yes.

23 Q And we'll get more to the vendor
24 packages later, but those were --

25 A Sure.

1 Q -- just some of the questions that came
2 to mind.

11 A What is my basis?

12 Q Yes.

13 A Because Circuit City performed its
14 obligation under each of those chargebacks, billbacks,
15 et cetera, whatever the agreement was between Circuit
16 City and Sony. We met our obligation. And so, from
17 our perspective we believe that those amounts are due.

18 Q How do you know that Circuit City met
19 its obligations under the programs for each of the
20 chargebacks listed in Exhibit A?

21 A I've reviewed the chargebacks that are
22 listed in Exhibit A.

23 Q What did you do to review the
24 chargebacks?

25 A What did I do to review them? Well, I

1 imagine just looked at the documentation to make sure
2 it was sufficient.

3 Q And when you say the documentation, what
4 are you referring to?

5 A The vendor package.

6 Q And those are the vendor packages again
7 that are in the six binders, right?

8 A Yes.

9 Q Are there any other documents that you
10 had looked at to review the chargebacks?

11 A Not for chargebacks, no.

12 Q So, just so I make sure that I
13 understand correctly, you didn't personally
14 participate in the underlying programs under which
15 Circuit City earned these chargebacks, right?

16 MR. FEINSTEIN: Objection.

17 A As in the negotiating of or -- I'm not
18 sure I understand the question.

19 BY MS. CHANG:

20 Q It was a very bad question. Let me
21 start over.

22 Other than reviewing the documentation,
23 have you done anything else to participate in insuring
24 that the chargebacks listed in Exhibit A are accurate?

25 A I don't know what else we would do.

1 From an accounting perspective. Based on the
2 information in the package which would include just
3 say, for example, an email may come from Sony that
4 says we're going to offer \$50 per unit on this
5 particular model for this particular date. If I have
6 that email and it's from Sony to Circuit City saying
7 that that's what they commit to, and then we sold that
8 product for that point in time and I have
9 documentation that says that we sold it, in my opinion
10 we met our obligation. There's really nothing else to
11 do.

12 Q Sure. And would the vendor -- just
13 taking your example. Actually, thank you for using a
14 concrete example which helps facilitate the
15 conversation. In your example you're saying I think
16 it was \$50, if you sell a certain amount of product
17 you get \$50 of credit maybe per unit, for example, of
18 product. You said you had documentation showing that
19 Circuit City sold the amount of product that was
20 necessary to earn credit under the program. Would
21 that data have been in the vendor package?

22 A Yes.

23 Q And if it wasn't in the vendor package,
24 would you -- what would you do? In reviewing these
25 chargebacks if you saw that that data wasn't in the

1 vendor package --

2 MR. FEINSTEIN: Objection.

3 BY MS. CHANG:

4 Q -- what would you do?

5 A I can't think of an instance where that
6 happened because it shouldn't have been approved as a
7 chargeback without that information.

8 Q What would you call that information? I
9 don't even know --

10 A Sales data.

11 Q What form would that sales data take?
12 Is it like a spreadsheet or is it just a bottom line
13 summary?

14 A Typically it's within the VMA documents
15 that are part of the package. And it would have the
16 exact brand model, date, number of units sold. There
17 could be an instance where there was back and forth
18 communication and then -- between Sony and Circuit
19 City. I've definitely seen that. And there were like
20 either exchange of spreadsheets or just within the
21 context of emails, you know, Sony may have said, oh,
22 it really wasn't a thousand and one units, it was 1200
23 units, and that's what you guys are eligible for. So,
24 that backup would have been sent to Accounting because
25 Accounting would have been looking for some support

1 for 1200 units being sold.

2 Q And in your example of 1200 units,
3 that's the number of units that Circuit City sells or
4 that Sony sells to Circuit City?

5 A It would depend on the program. But, in
6 my example because it's a sales-based chargeback, it
7 would be the number of units that Circuit City sells
8 to its customers.

9 Q So, I imagine in that example, since it
10 probably was a rare day that Circuit City sells 1200
11 units in a day, it would probably be a series of
12 dates?

13 MR. FEINSTEIN: Objection.

14 BY MS. CHANG:

15 Q Would it be a series of dates showing
16 the dates on which Circuit City sold this particular
17 product?

18 A It would generally be a time frame on a
19 trailing credit or sales-based program. It would be
20 say, for example, from January 1st through January
21 5th. And then we would submit the sales from January
22 1st through January 5th for that particular item or
23 items. Sometimes it covered more than one item.

24 Q And in that example you would have
25 January 1st through January 5th with one number of

1 the --

2 A Typically, yes.

3 Q -- units sold during that time period?

4 A Yes.

5 Q Understood.

6 In your example of Circuit City selling
7 1200 units between this five-day period in January of
8 '09, did you personally observe Circuit City's sales
9 of a particular product during that time frame?

10 A As in being at the stores watching
11 customers buy the units?

12 Q Right.

13 A No.

14 Q And so what system are you relying on
15 for that data?

16 A We are relying on VMA which gets data
17 fed to it from our sales system.

18 Q Did you ever speak to Circuit City
19 buyers about whether program requirements were met
20 under a particular program?

21 A In general?

22 Q Specifically for Sony programs.

23 A And over what time frame?

24 Q Why don't we say with respect to any of
25 the chargebacks listed in Exhibit A.

1 A No. I wouldn't have personally.

2 Q So, in going back to your declaration,
3 in Paragraph 6 you talk about how Circuit City buyers
4 were responsible for negotiating deals with Sony for
5 committed funding and entering the agreements into the
6 VMA system. Is it fair to say then that it's buyers
7 who were responsible for determining whether Circuit
8 City met program requirements?

9 A Yes. Initially.

10 Q You say initially, which makes me think
11 that later on someone else may be responsible for
12 determining whether Circuit City met program
13 requirements. Who else might be responsible?

14 A Well, ultimately Accounting approved the
15 chargebacks.

16 Q So, would that be you who was
17 responsible for determining whether Circuit City met
18 program requirements?

19 A It would have been the Vendor Funded
20 Accounting Group and there were many individuals that
21 worked within that department.

22 Q That's the group of 20-plus people that
23 you mentioned in your deposition?

24 A Correct.

25 Q Do you know whether the people in --

1 well, let's first talk about buyers and then we'll
2 talk about the Vendor Funded Accounting Group since it
3 sounds like there are two groups that are responsible
4 for determining accuracy. So, first taking the buyers
5 since it's initially them, did they ever make mistakes
6 in determining whether Circuit City had met program
7 requirements?

8 MR. FEINSTEIN: Objection.

9 A I'm sure. They're human. So, I'm sure
10 that they could have made mistakes. I have seen email
11 communication where they submitted chargebacks and
12 then I've seen in the production that Sony provided us
13 where they actually issued credit memos greater than
14 what our buyers submitted, which would mean to me that
15 the buyer and in that case Accounting must have made a
16 mistake. I'm assuming Sony had data that perhaps we
17 sold more than what our records indicated. I don't
18 fully know why that would happen. But, I have seen
19 instances where Sony has corrected a chargeback for
20 one reason or another.

21 BY MS. CHANG:

22 Q And do you have any knowledge as to
23 whether the buyers who looked at the chargebacks
24 listed in Exhibit A may have been inaccurate in any of
25 their calculations or assessments with respect to

1 whether Circuit City met program requirements?

2 MR. FEINSTEIN: Objection.

3 A I'm not aware of any inaccuracies. And
4 again based on my review of the documents, it looks
5 like from our vendor packages that what we submitted
6 at least from our records appears to be accurate.

7 BY MS. CHANG:

8 Q So, having discussed the buyers now I'm
9 going to the Vendor Funded Accounting Group. Did the
10 Vendor Funded Accounting Group ever make mistakes in
11 determining whether Circuit City had met program
12 requirements with respect to the chargebacks listed in
13 Exhibit A?

14 A I'm not aware of any instance where they
15 made a mistake as to whether we met the requirements.
16 Again, I think the only -- and I don't know if you'd
17 call it a mistake, but maybe just a difference in data
18 or what have you is where I've seen that a chargeback
19 has been submitted and then Sony has come back and
20 corrected an amount for whatever reason. But, it's
21 not that you didn't meet the program requirement.
22 It's that we have a difference in data. Difference in
23 number of units or that kind of thing.

24 Q In reviewing chargebacks, which I know
25 is a very important part of what Accounting -- the

1 accounting department did with respect to these, what
2 types of calculations did Accounting check?

3 MR. FEINSTEIN: Objection.

4 A It would depend on the program. I mean,
5 it's if a trailing credit sales-based, like I said we
6 would be looking to insure that there was
7 documentation of the sale. That we had documentation
8 from Sony committing to that particular funding. And
9 then ultimately that the, you know, amount per unit
10 that was committed times the number of units sold
11 obviously would equal the chargeback amount. And that
12 would be it in that example. I mean, there's a
13 variety of programs.

14 BY MS. CHANG:

15 Q Concrete examples. I'm going to pull
16 out Sony Exhibit 5 from last time, so it's already
17 marked. If you could turn to CCLT-30124. What is
18 this?

19 A This would be the sales details by brand
20 model.

21 Q And would they be sales from -- I'm
22 sorry. Whose sales do these reflect?

23 A Circuit City's sales.

24 Q To?

25 A Customers.

1 Q And what on this page would Accounting
2 check in terms of calculations? What, if anything?

3 A Well, this is system generated. So,
4 there shouldn't be any issue with calculations. But,
5 if I were reviewing it I would doublecheck this
6 calculation because it's such a large dollar amount.
7 And I would again, the main thing I would be focusing
8 on is that these are the brand models that were
9 included in the commitment and that it was over the
10 period of time that was committed.

11 Q Would you also check to make sure that
12 the trailing credit amount was appropriate?

13 A The amount per unit?

14 Q Yes.

15 A That should be in the commitment, but
16 yes.

17 Q I had another question in Paragraph 7.
18 So, in Paragraph 7 you said that the accounting
19 department would review the chargeback and supporting
20 documents for accuracy, including commitment
21 documentation, usually in the form of email
22 confirmations from Sony, relevant calculations or data
23 if the chargeback was based on sales or price
24 protection, and timing to insure the chargeback was
25 handled correctly for accounting purposes. What does

1 this mean?

2 A Well, we wouldn't want to record this
3 chargeback as a receivable if the sales had not yet
4 taken place. Because we hadn't met our performance
5 obligation yet. Just as an example.

6 MS. CHANG: Sorry, can you repeat her
7 answer, please?

8 COURT REPORTER: "Well, we wouldn't want
9 to record this chargeback as a receivable if the sales
10 had not yet taken place. Because we hadn't met our
11 performance obligation yet. Just as an example."

12 BY MS. CHANG:

13 Q Would it even be possible to submit a
14 chargeback if the sales hadn't taken place?

15 A You shouldn't submit one to Sony, but it
16 could certainly make its way into the system. Because
17 we put the chargebacks in the system in a draft state.

18 Q But, then when we got to the I think you
19 called it a VMA page showing the number of units
20 sold, --

21 A Sure.

22 Q -- wouldn't the number of units sold
23 reflect that no sales had yet taken place?

24 A If it's correct. But, what I was
25 explaining was how we would insure that it's correct.

1 So, I would want to make sure they were the
2 appropriate dates. And if someone had grabbed sales
3 for the wrong period of time that's other than the
4 commitment, that would obviously be inaccurate. So,
5 we wouldn't want to record it that way.

6 Q Okay. Understood.

7 A Sure.

8 Q Let's talk about vendor packages.

9 A Sure.

10 Q Have you ever personally compiled a
11 vendor package for any of the chargebacks at issue in
12 this case?

13 A Only to the extent that the compilation
14 was to really submit all of them together to Sony.
15 So, for example, back when the email and spreadsheet
16 that we talked about earlier today were exchanged with
17 Tim and Alan, I pulled the packages -- they were
18 already put together. So, it was really putting them
19 in an email to send to Tim and Alan. But, I was not
20 responsible for compiling the initial package if you
21 will.

22 Q I understand.

23 A I don't know if that answered your
24 question.

25 Q No, it does.

5 MR. FEINSTEIN: Objection. Asked and
6 answered. Go ahead.

7 A Sure. Generally it includes like a
8 cover sheet that's from our VMA system. And then
9 additional pages from the VMA system that really just
10 kind of summarize the program. So, again in this
11 example -- or actually I don't even remember what this
12 example is, but in some examples if it were based on
13 sales it would say that it was sales based, what the
14 time frame was, what the units were, number of units
15 sold. It would have the commitment information which
16 could be an email, could be a sales news I think they
17 were sometimes called. And there may be email
18 communication back and forth between Sony and the
19 vendor. And that's generally what was in a vendor
20 package.

21 BY MS. CHANG:

22 Q Looking at actually from Exhibit 5, Sony
23 Exhibit 5, CCLT-30121.

24 A Yes.

25 Q What is this?

1 A This is part of a typical package. I
2 believe it's called a confirming letter. But, it's
3 really just a letter from Circuit City to Sony that's
4 with the package.

5 Q What's its purpose?

6 A It really just summarizes everything
7 that's in the rest of the package. And it's generally
8 addressed or says who committed the funding.

9 Q Would there ever be a reason for a
10 vendor package to not include this confirming letter?

11 A I don't know that there would be a
12 reason for it not to. But, this letter doesn't really
13 give all the support that the rest of the package
14 does. So, from a priority standpoint I don't think
15 that this is the most important piece of the package
16 if you will.

17 Q And in looking at any particular vendor
18 package, is there a way -- like Sony Exhibit 5 is a
19 vendor package; would you agree with me?

20 A Yes.

21 Q So, can you page through it and tell me
22 just on this example which date in here tells me what
23 date this was submitted to Sony?

24 A Because the letter is addressed January
25 23rd, 2009, that would be my assumption. But, when

1 the billers submit, there's often a I think it's
2 called a billing memorandum. It's again another cover
3 sheet. It doesn't have a lot of information. But, it
4 has the chargeback number, the dollar amount. And
5 that has a date as well. I think that's generally the
6 same as this, but I can't say with a hundred percent
7 certainty.

8 Q When you say that and this, can you
9 just --

10 A I'm sorry. I believe that the date at
11 the top of the confirming letter is the same as what
12 you would see on the billing memo. But, I can't say
13 in every instance that's the case. But, I believe --
14 that's my recollection.

15 Q If this confirming -- like in
16 CCLT-30121, the date on the confirming letter is
17 January 23rd, 2009. Is there any reason why -- well,
18 sorry, strike that question.

19 If the date on this confirming letter is
20 January 23rd, 2009, would it ever be the case that
21 Circuit City submitted this vendor package to Sony
22 before January 23rd, 2009?

23 A Not that I'm aware of, no.

24 Q Just making sure.

25 Who personally sent the vendor packages

1 to Sony? Was that the billers?

2 A Yes.

3 Q Is there a notation in your VMA system
4 or any other system that Circuit City maintained to
5 confirm whenever a vendor package goes out to Sony?

6 A I don't think there's a notation in the
7 system.

8 Q Or notation anywhere?

9 A I've seen the bills. I've seen the
10 emails with the bills. I'm not sure that there's
11 anything in the system. I'd have to go back to look,
12 but I haven't seen anything. There's nothing that I
13 recall.

14 Q Paragraph 9 in your declaration. You
15 say that Circuit City regularly and routinely offset
16 these amounts, which are the credits earned under
17 these chargebacks, against its obligations to Sony by
18 applying the credits to a pending Sony invoice and
19 concurrently cutting a net check to fully satisfy the
20 invoice. And I understand you assumed
21 responsibilities for vendor funding at some point
22 after the liquidation. Did you ever personally apply
23 credits to pending Sony invoices in your role as -- in
24 your role in the Vendor Funded Accounting Group?

25 A I wouldn't have. Because that just

1 wasn't a part of -- at my level that wasn't a part of
2 my responsibility. I can explain the process if you
3 want to hear more about it, but.

4 Q Who did?

5 A Who applied the credits?

6 Q Yes.

7 A Well, the credits would have been
8 applied by the payables department.

9 Q And how did you know, how did you come
10 to be familiar with what they were doing with respect
11 to applying credits to pending Sony invoices?

12 A Sure. Well, one way that I became
13 familiar is as part of the Vendor Funded Accounting
14 responsibility, the chargebacks as receivables would
15 be basically interfaced from our receivable system to
16 the payable system. I believe I said this in my prior
17 deposition and I'm sure it's in plenty of documents,
18 but when a chargeback moves from the vendor receivable
19 system to the payable system it gets assigned a new
20 number, and it starts with an AV. Sometimes referred
21 to as AVO's. And that AVO was then systematically
22 applied against outstanding invoices.

23 Q How do you know?

24 A Because I've seen it. I mean, I can see
25 it in the system.

1 Q Did you ever cut a net check to satisfy
2 the pending Sony invoices?

3 A Me personally?

4 Q Yes.

5 A I didn't cut checks, so, no.

6 Q Who did?

7 A The payables department.

8 Q And how did you become aware that they
9 were cutting net checks to satisfy pending Sony
10 invoices?

11 A I've been in accounting for a long time,
12 so I kind of just know the process in general. But,
13 specifically it's in our data, the data that I have
14 reviewed.

15 Q Does the data have a name?

16 A I don't really know what it would be
17 called specifically. But, you know, in the payables
18 data there would be invoices, there would be checks
19 that were cut. And the check -- almost like a
20 remittance, but that's not necessarily what you would
21 call it from a data standpoint. It would have the
22 invoices and it would have any credits that were
23 applied and it would have the net check amount. So,
24 I've seen that data for this matter as well as many
25 others.

1 Q So, in Paragraph 12 you say that based
2 on my review of the VRS, and that's vendor receivable
3 system?

4 A Yes.

5 Q And supporting vendor package
6 documentation, Sony owes Circuit City a total of \$70.6
7 million on account of chargebacks. That's essentially
8 what you say. So, is it safe to say that if a
9 chargeback exists in Circuit City's system, you assume
10 that it's a valid chargeback?

11 MR. FEINSTEIN: Objection.

12 A Yes. Because it would have been
13 approved in order for it to be in the receivable
14 system.

15 BY MS. CHANG:

16 Q Since there was an objection I'm going
17 to rephrase.

18 So, why do you conclude based on your
19 review of the VRS and supporting vendor package
20 documentation that Sony owes Circuit City \$70.6
21 million on account of chargebacks?

22 A That's the total of the chargebacks and
23 each of the chargebacks was reviewed. The
24 documentation supports the commitment that Sony -- I'm
25 sorry, that Circuit City performed its obligation

1 under the commitment from Sony to Circuit City.

2 Q And when you say "the documentation",
3 are you referring to the vendor packages?

4 A Yes.

5 Q Is there any other basis for your
6 conclusion that Sony owes Circuit City \$70.6 million
7 on account of the chargebacks listed in Exhibit A?

8 A No, the vendor packages are the
9 supporting detail for the receivable. The receivable
10 is what was presented in this declaration, that
11 spreadsheet, that really large spreadsheet which came
12 from our vendor receivable system. And that was our
13 system of record. So, for us to have booked it as a
14 receivable, we being Accounting, felt that it was a
15 legitimate receivable due to Circuit City.

16 Q And you felt that it was legitimate
17 based on the documentation that you had reviewed?

18 A Yes.

19 Q At the very beginning of when we started
20 this conversation we talked about how in April or May
21 of 2010 you had worked with Tim Griebert and Alan
22 whose last name you can't remember at the moment, to
23 reconcile credits between Sony and Circuit City.
24 Before that did Sony -- to your knowledge did Sony
25 ever communicate any disputes concerning chargebacks

1 to people at Circuit City?

2 A Ever?

3 Q Yes.

4 A I've seen even in some of our vendor
5 packages that were submitted where there had been, I
6 don't know that I would word it as a dispute, but at
7 least a discussion about what the appropriate number
8 of units or dollar amount was. So, I have seen that.
9 I don't remember if that would be the case for what we
10 now show as outstanding and due to Circuit City. But,
11 I have seen that type of communication, yes.

12 Q And with respect to the disputes that
13 you've seen in your own vendor packages, so the ones
14 at issue in this case, do you know how each of those
15 disputes were resolved?

16 MR. FEINSTEIN: Objection.

17 A I mean, not without looking at some
18 specifically. But, again, the ones that I can think
19 of just in general had to do with dollar amounts or
20 number or units and then they would be corrected,
21 because I've seen chargebacks be voided and reissued.

22 BY MS. CHANG:

23 Q And in the examples that you're thinking
24 of with respect to chargebacks at issue here where
25 they were voided and corrected, would that information

1 be reflected in the vendor package that you included
2 in the binders?

3 A Typically, yes.

4 Q And so as you're sitting here today, is
5 it your understanding that all of the amounts of the
6 chargebacks listed in Exhibit A are correct in that if
7 they were disputed they've been dealt with and
8 corrected?

9 A From my perspective, yes.

10 Q Quick question about warranty claims.

11 A Sure.

12 Q Because I understand that Exhibit A also
13 includes a number of warranty claims that the Trust is
14 asserting against Circuit City, right?

15 A Yes.

16 Q Did you ever personally deal with
17 warranty claims between Sony and Circuit City?

18 A No.

19 Q In your declaration you talk about how a
20 warranty claim is created at the point of sale and
21 then a product is sent to the service center for
22 repair. This is Paragraph 16 of your declaration.

23 How do you know this?

24 A Based on review of documents and
25 discussions with Heather Ferguson.

1 Q Which documents did you review?

2 A They weren't necessarily titled, but she

3 had some writeups about the process.

4 Q And were those processes specific to

5 Sony's relationship with Circuit City?

6 A They were just the process in general.

7 The warranty process.

8 Q Circuit City's warranty process?

9 A Yes.

10 Q Do you know if that process was

11 different with respect to Sony versus other Circuit

12 City vendors?

13 A I'm not aware of any differences.

14 Q Did you ask Heather whether there were

15 any differences?

16 A Well, in our conversation we talked

17 specifically about Sony. So, she didn't point out

18 anything different.

19 Q You also mentioned in Paragraph 16 that

20 after claims were created at the point of sale, they

21 were transferred to a program entitled SCIPS,

22 S-c-i-p-s?

23 A Yes.

24 Q Do you know what SCIPS stands for?

25 A I do not remember what the acronym

1 stands for.

2 Q How do you know that claims were
3 transferred to SCIPS?

4 A It was a systematic process from the
5 point of sales, an interface into that system. Just
6 part of the normal operations of Circuit City.

7 Q Have you ever personally worked with the
8 SCIPS system?

9 A No.

10 Q Then you mention that a claim was closed
11 after the service center repairs the product. And
12 then the claim is transmitted through SCIPS to the
13 accounting department to determine if it's eligible
14 for payment based on Sony's terms and conditions. Are
15 you aware of any agreements between Circuit City and
16 Sony with respect to warranty claims?

17 A I have not personally seen the
18 agreement.

19 Q Are you aware --

20 A But, I have seen -- I'm sorry. I have
21 seen emails where there have been communication
22 exchanges between Circuit City and Sony where they
23 have, I don't know if approved is the right word, but
24 where they have agreed to the claims that were
25 submitted. The underlying agreement I have not seen

1 personally.

2 Q Do you know for sure whether there is an
3 agreement between --

4 A I don't know for sure.

5 Q Are you -- so, you mentioned that
6 Accounting would determine whether warranty claims
7 were eligible for payment based on Sony's terms and
8 conditions. Are you familiar with Sony's terms and
9 conditions concerning warranty claims?

10 A This is more specific to whether the
11 product was covered under warranty. So, again, I know
12 the process. I haven't seen the document itself.
13 But, if the part were covered under warranty or if the
14 customer's warranty was still intact. That's the
15 piece that Accounting would be looking to see before
16 they submitted the bill to Sony.

17 Q And do you have personal knowledge as to
18 whether those terms and conditions were met with
19 respect to each of the warranty claims listed in
20 Exhibit A?

21 A That's my understanding. But, I
22 didn't -- I didn't bill these and I wasn't responsible
23 for warranty.

24 Q What's the basis for your understanding?
25 A Discussions with Heather and also

1 documentation of the warranty process.

2 Q Did you actually review each of the
3 individual warranty claims listed in Exhibit A?

4 A Did I review them?

5 Q Yeah.

6 A No.

7 Q And just to be clear, I just mean in
8 compiling the spreadsheet did you review each of the
9 warranty claims?

10 A I compiled the spreadsheet. I did not
11 review the claims.

12 Q With respect to warranty details, which
13 are different from the warranty claims, in Exhibit A
14 you mentioned in Paragraph 17 of your declaration that
15 this information was downloaded from Circuit City's
16 internal database. Do you have personal knowledge as
17 to whether the data in the internal database is
18 accurate?

19 A Well, it's a download from our formal
20 Peoplesoft system. So, to the extent that that's
21 accurate, which it should be, then, yes.

22 Q What's your basis for thinking that the
23 Peoplesoft system should be accurate?

24 A Well, that was our system of record.
25 So, from an accounting standpoint we would have had

1 checks and balances to insure that the system data was
2 accurate. When Circuit City, you know, liquidated and
3 we moved headquarters, the system didn't remain in
4 place but the data did. And that's why it's in this
5 database versus directly from the system.

6 Q What kinds of checks and balances did
7 the Peoplesoft system have?

8 A Are you asking what did it have to
9 insure that --

10 Q The accuracy.

11 A -- it was downloaded correctly or --

12 Q No. I thought you had said that your
13 basis for believing that the warranty details are
14 accurate is because it came from your Peoplesoft
15 system, and that there's checks and balances in your
16 system to make sure that the data is accurate. If I
17 mischaracterized your testimony, just let me know.

18 A Well, there's checks and balances in
19 accounting. So, whether it be the system or the
20 process itself. So, just like with chargebacks,
21 Accounting would have insured that a receivable was
22 booked when it should be based on several, you know,
23 performance obligation, the timing, et cetera.
24 Similar process would be in place for warranties. So,
25 it shouldn't be on the books as a receivable if

1 Circuit City didn't believe that it had met its
2 obligation or that it was entitled to the receivable.
3 From a system standpoint, you know, we were a
4 publically traded company, so we had to have system
5 controls in place. Specifically what they were, I
6 cannot speak to that. But, I'm not aware of any
7 issues within our Peoplesoft system.

8 Q Do you have any personal knowledge as to
9 whether Circuit City sent any of the warranty claims
10 listed in Exhibit A to Sony?

11 A I've seen some emails where they have,
12 yes. Whether it was every single one on there and I
13 haven't seen every email, no. But, I have seen email
14 communication from Circuit City to Sony. And they
15 also had a system that was a web ap, I think it was
16 called Service Bench, where they could see the claims
17 out there. So, it was kind of like a two way. Both
18 parties could view the information at that point.

19 Q Do you know whether Sony ever disputed
20 any particular warranty claim that's listed on Exhibit
21 A?

22 A I'm not aware of any particular
23 disputes. I do recall at some point in the
24 reconciliation or exchange of information process
25 there was a notation that they agreed to a significant

1 portion of this warranty claim. So, I don't recall if
2 it was just all of the post-petition amount or -- it
3 was over \$400,000. I just don't remember the exact
4 dollar amount.

5 Q With respect to the portion that Sony
6 didn't say it agreed to, do you know how those
7 disputes were resolved?

8 A I don't even recall if they said they
9 disputed it or that it was invalid or what the
10 notation was. I just -- I can literally picture them
11 saying agreed next to this 400-some thousand dollar
12 amount. I don't remember the other piece. It was so
13 insignificant that it would have kind of been a blip
14 on the radar for me to be honest.

15 Q If Sony had indicated that it agreed to
16 let's say 400,000 or so, and the balance Sony didn't
17 say that it agreed, would you understand that Sony
18 disputed that amount or not? Or what would your
19 understanding be with respect to that balance?

20 MR. FEINSTEIN: Objection.

21 A I would have a follow-up question as to
22 why they didn't agree to it. But, I'm not sure I
23 would have a complete understanding.

24 BY MS. CHANG:

25 Q Do you know whether you communicated

1 that question as to -- sorry, let me rephrase the
2 question.

3 MS. CHANG: Can you read back her answer,
4 please?

5 COURT REPORTER: "I would have a
6 follow-up question as to why they didn't agree to it.
7 I'm not sure I would have a complete understanding."

8 BY MS. CHANG:

9 Q Do you recall whether you asked them a
10 follow-up question with respect to the balance that
11 they didn't necessarily explicitly say that they
12 agreed to?

13 A I don't recall because I was really
14 focused on the chargebacks portion.

15 Q If you -- strike that.

16 Do you have any knowledge as to how
17 Circuit City received credit for its warranty claims
18 with respect to Sony?

19 A As to how it received credits?

20 Q Yeah. So, let me back up.

21 You mentioned in your declaration with
22 respect to chargebacks, for example, that Circuit City
23 offset and deducted amounts from pending Sony
24 invoices. That's how Circuit City received credit for
25 the chargebacks. My question is how -- do you have

1 any knowledge with respect to how Circuit City
2 received credit for the warranty claims that are
3 listed in Exhibit A?

4 A Yes, my understanding is the same
5 process. That they were deducted from invoices.

6 Q And furthermore that -- is it also your
7 response that Circuit City would cut a net check to
8 satisfy the pending invoices?

9 A Yes.

10 Q In Paragraph 18 you talk about returns.

11 A Yes.

12 Q And your declaration mentions a merchant
13 deal letter agreement.

14 A Yes.

15 Q What is that?

16 A It's a -- I believe it's actually titled
17 deal letter, but there's a letter from Sony to Circuit
18 City that just outlines certain parts of I guess the
19 agreement or process between Circuit City and Sony and
20 this one specifically talks about the returns process
21 and what items are eligible for return, which I
22 believe was customer returns and product defects.

23 Q Have you actually seen a copy of the
24 deal letter?

25 A Yes.

1 Q Is there a reason why you didn't attach
2 it to your declaration?

3 MR. FEINSTEIN: Objection.

4 A No reason.

5 BY MS. CHANG:

6 Q When did you last review it?

7 A You know what, I don't recall. I'm not
8 sure. Probably in the last couple of months. I
9 couldn't say exact date. Sorry.

10 (Mr. Barrett leaves the room.)

11 BY MS. CHANG:

12 Q Did you review the deal letter in
13 connection with drafting this declaration?

14 A I don't recall doing so.

15 Q Do you remember how many pages long it
16 is?

17 A I don't remember that either.

18 Q Do you remember if it's a hundred or is
19 it more like ten? Or fewer?

20 A I think it's ten or fewer.

21 Q Do you know whether the Trust produced a
22 copy of that deal letter as part of discovery?

23 A I believe we would have as part of -- I
24 think there was a question specific to contracts.

25 Q And do you have personal knowledge as to

1 whether Circuit City complied with all of its
2 obligations under this deal letter that you're
3 referencing right now?

4 A It's my understanding that we did.

5 Q On what basis? What's the basis for
6 that understanding?

7 A Well, the letter from my recollection
8 speaks to customer returns and defects and that's what
9 the returns were for. I don't remember what else was
10 in there to be honest, but.

11 Q Did you review each item on the returns
12 list in Exhibit A?

13 A No.

14 Q Let's talk about pricing deductions and
15 shortages. At this point if you could turn to Exhibit
16 A in Sony Exhibit 9. And just go to the very last
17 page of Sony Exhibit A. It will be an easy way to
18 reference. So, looking at the very top, very first
19 line item, shortage deductions, --

20 A Yes.

21 Q -- in the amount of it looks like
22 \$283.99.

23 A Yes.

24 Q So, I'm just picking this one out of the
25 hat. There's nothing special about it.

1 A Sure.

2 Q Do you have personal knowledge as to the
3 circumstances underlying this particular pricing
4 deduction -- shortage deduction, I'm sorry?

5 A Not the particular one. But, the
6 process, yes.

7 Q And how about there's a pricing
8 deduction line item right under it, do you see it?
9 It's for \$255?

10 A Yes.

11 Q Do you have personal knowledge as to the
12 circumstances underlying that pricing deduction?

13 A Not the specific item, no.

14 Q In compiling this list of pricing
15 deductions and shortage deductions did you review each
16 item on this list before putting it on the list?

17 A No.

18 Q Do you believe that it is an accurate
19 representation though of amounts that Sony owes
20 Circuit City for each of these items?

21 A Yes.

22 Q What's the basis for your understanding?

23 A This information came from our payable
24 system and it would have been reviewed by folks in the
25 payables department. So, just by nature of the fact

1 that it's another group within Accounting, I mean, I
2 would rely on their understanding that they had done
3 their due diligence in recording this information.
4 And this isn't something I would see across -- you
5 know, throughout the history of Sony and Circuit City
6 this is not unusual.

7 Q In preparing this spreadsheet did you
8 converse with anyone in payables to discuss the
9 accuracy of the underlying data in the spreadsheet
10 with respect to pricing deductions and shortage
11 deductions?

12 A Yes. To more gain just a general
13 understanding of where did the information come from
14 and what was the normal business process. There was
15 nothing outside of the normal business process. And
16 this information came directly from the systems. We
17 just insured everything tied back to the system that
18 was in the spreadsheet.

19 Q In your conversations with the payables
20 folks about these particular deductions did you
21 discuss -- I know you discussed the process and you
22 discussed the systems. Did you discuss these
23 individual line items with them?

24 A No.

25 Q Did you draft your declaration yourself?

1 A Most of it, yes.

2 Q Did you consult any documents in
3 drafting it?

4 A Well, the exhibits that are attached.

5 Q Did you review any other documents other
6 than the exhibits that are attached?

7 A I don't recall doing so. No, I don't
8 think so.

9 Q Do you need a break?

10 A Sure.

11 (Off the record from 12:06 p.m. to 12:13 p.m.)

12 BY MS. CHANG:

13 Q So, here's the part where we have to
14 mark our pages. So, looking at Exhibit A to your
15 declaration, just given that both counsel have noted
16 that the top of the pages are illegible as far as
17 assigned page numbers, I thought it would be a helpful
18 exercise if we went through the seven pages for
19 chargebacks and numbered them.

20 A Sure.

21 Q So, the first full spreadsheet page
22 we'll call Page 1.

23 A Okay.

24 Q And then we'll just go 2, 3, 4, 5, 6.
25 And there's only seven so it's not so bad.

1 A Okay.

2 Q So, looking at Page 4 of the chargeback
3 portion of Exhibit A, if you look about a third of the
4 way down there's a line item for 96847. And I believe
5 the chargeback numbers go more or less sequentially.

6 96847.

7 MR. FEINSTEIN: Okay. I've got it.

8 212,000?

9 MS. CHANG: Exactly.

10 BY MS. CHANG:

11 Q So, with respect to this particular line
12 item, do you have personal knowledge as to whether
13 Circuit City met the requirements for this particular
14 chargeback for \$212,000?

15 A Well, I reviewed them all. So, at the
16 time that I reviewed it I would say that the
17 documentation supported that we did.

18 Q Do you have personal knowledge as to
19 whether Sony agreed that Circuit City had met all the
20 requirements for Chargeback 96847?

21 MR. FEINSTEIN: Objection.

22 A Agreed when? After we submitted the
23 chargeback or via its commitment to us?

24 BY MS. CHANG:

25 Q That's a good question. That's a very

1 good question. My question is whether you know
2 whether Sony agreed after Circuit City submitted its
3 chargeback claim to Sony, whether Sony then agreed,
4 oh, yes, you agreed -- I'm sorry, you complied with
5 the program requirements?

6 MR. FEINSTEIN: Objection. You can
7 answer.

8 A I don't know. For that one I just don't
9 recall. But, I know that in the production and I
10 think also it was in my declaration, there was a
11 spreadsheet that was prepared by Sony. And this is a
12 post-petition item and there was a post spreadsheet
13 where they had indicated certain items as being valid
14 or credit memos issued. So, if we're going to try to
15 find out, that would be one of the places I would
16 look.

17 MS. CHANG: Can I have this please marked
18 as Sony Exhibit 10?

19

20 (An eight-page photostatic copy of a
21 vendor package for CB Number 96847,
22 Bates StampCCLT010356-010363, was marked
23 Sony Exhibit Number 10.)

24

25

1 BY MS. CHANG:

2 Q I'm showing you what has been marked as
3 Sony Exhibit 10. And it's Bates Number CCLT-10356 to
4 CCLT-10363. And feel free to take a cruise through
5 it. What is this?

6 A Is that a question?

7 Q Yes. What is this?

8 A What is this?

9 Q Yeah. What is --

10 A This is a vendor package.

11 Q This is a vendor package for 96847?

12 A Yes.

13 Q Can we turn to Page 10358? And I
14 believe you had mentioned earlier in your testimony
15 that this is a confirming letter?

16 A Yes.

17 Q And just going to read -- direct your
18 attention to the first paragraph where it says, "These
19 funds are for Sony to fund \$265,000 if purchases from
20 April, 2008, to March, 2009, exceed \$53 million;
21 collected \$53,000 since met first half target of
22 \$23.85 million; this chargeback is for the remaining
23 \$212,000." Can you tell me the -- well, just to make
24 sure, the date on this confirming letter is January
25 29, 2009. And according to your previous testimony

1 then this would be the date on which Circuit City
2 probably submitted the vendor package to Sony, right?

3 A Should be, yes.

4 Q Do you know whether Circuit City ever
5 attained the \$53 million sales target for the time
6 frame?

7 A Let's see. According to this, this
8 chargeback is for the remaining 212,000. I'm just
9 trying to go through these comments and see if I
10 can --

11 Q Take your time.

12 A -- figure out what all this means.

13 Okay. This last section goes through
14 April through --

15 Q Can you give me a page number just for
16 the record?

17 A 010361.

18 Q Okay. Yeah.

19 A Has the purchases of 26.2 million and
20 the amount or the percentage of the 53 million that
21 should be recognized.

22 Q Okay.

23 A So, that at least accounts for a portion
24 of it. What I don't see here is the other portion to
25 be honest with you. At least not in this package.

1 Q Okay.

2 A Yeah. I don't see it in here. Like the
3 actual evidence that I would expect to see.

4 Q So, is it fair to say you don't have
5 personal knowledge that the requirements for this one
6 Chargeback 96847 were performed?

7 MR. FEINSTEIN: Objection.

8 A I don't have personal knowledge. But, I
9 think there's ways to go about validating it.

10 BY MS. CHANG:

11 Q How would you do that?

12 A I could look at sales data for one.
13 And, two, I would look into the production information
14 that was exchanged to see if there were any other, you
15 know, email exchanges or whatnot that didn't make its
16 way into this package for some reason.

17 Q Is the sales data that you mentioned
18 still available at the Trust?

19 A It should be. Our sales system
20 obviously is not utilized anymore because we're not
21 selling anything. But, we should be able to query
22 sales for certain periods of time. I think it only
23 goes back one year from March of 2009, which this
24 obviously only goes through March of 2009. So, we
25 should be able to get that, yes.

1 MS. CHANG: If we could mark this,
2 please, as Sony Exhibit 11.

3

4 (A one-page email chain, Bates Stamp
5 CCLT00299010, was marked Sony Exhibit
6 Number 11.)

7

8 BY MS. CHANG:

9 Q Just take a quick look at this document.
10 Does this appear to be an email regarding the same
11 chargeback that we were just discussing, 96847?

12 A Yes.

13 Q And do you see it's an email -- sorry,
14 this is Bates Number CCLT-299010 for the record.
15 Looking at the middle email in the chain, it's an
16 email from Graham Mcivor to Derrick Wheeler. Who is
17 Graham Mcivor?

18 A Based on -- I don't know him personally,
19 but based on the email nomenclature it says MDSE,
20 which is merchandising. So, he would have worked in
21 merchandising. And then in the signature line it says
22 he was a buyer for DVD hardware.

23 Q Who is Derrick Wheeler?

24 A Derrick Wheeler to my understanding is
25 also a buyer, and -- I'm sorry, he was in Vendor

1 **Funded Accounting.**

2 Q And here I see on December 4th of 2008
3 Mr. Mcivor says to Mr. Wheeler, "As of now we are
4 trending short of the \$53 million Sony goal." And you
5 see that this email gets forwarded by Mr. Wheeler to
6 Greg Lambert and then Greg Lambert sends it to someone
7 named Danny Cagwin. Do you know who Danny Cagwin is?

8 A Yes, he was in the merchandising area.

9 I believe he was higher level than a buyer, but I
10 don't recall his title.

11 Q And do you see on January 28th, 2009,
12 which is almost two months later, Greg Lambert says to
13 Mr. Cagwin, "Your team may have done this already but
14 did we confirm we did not hit the goal for the VIR?"
15 Have you ever seen this email?

16 A Not specifically, no.

17 Q So, do you have any knowledge of what
18 response Mr. Lambert got from Mr. Cagwin?

19 A I'm not aware of any response. Not to
20 say that he didn't, but I haven't seen it.

21 MS. CHANG: Could we mark this as Sony
22 Exhibit 12, please?

23

24 (A one-page photostatic copy of an
25 email chain, Bates Stamp CCLT00101125,

1 was marked Sony Exhibit Number 12.)

2

3 BY MS. CHANG:

4 Q Do you know who Marie -- I'm sorry, I
5 keep forgetting. Exhibit 12 is CCLT-101125. Do you
6 know who Marie Dorey is?

7 A I know that she worked for Sony. And
8 she was on a lot of email communication.

9 Q Do you know -- do you have any further
10 sense of who she was or what her role was at Sony?

11 A I don't know her title, but I know that
12 she was very involved in the communication between
13 Sony and Circuit City with respect to chargebacks.

14 Q And can you elaborate -- you mentioned
15 Greg Lambert before actually. You said he was the
16 supervisor of the Vendor Funded Accounting Group.
17 What was his role with respect to chargebacks that
18 Circuit City claimed from Sony?

19 A I think I described this earlier. But,
20 he would have been responsible for reviewing the
21 chargebacks as like a final review. There were
22 individual accountants within the group that would
23 have been the first-level review. When it got towards
24 the end he helped oversee the process of insuring that
25 chargebacks were billed, what we call the billers

1 back.

2 Q So, turning to Sony Exhibit 12, just
3 looking together here, you see Marie Dorey is writing
4 an email to Greg Lambert on February 24th, 2009. And
5 the chargeback we all were just looking at was 96847
6 which is the third one down. And do you see she
7 writes here, "Did not meet VIR requirements." Do you
8 know what VIR stands for?

9 A Volume incentive rebate.

10 Q Are you aware -- have you ever seen this
11 document before?

12 A No.

13 Q So, you have not done anything to
14 investigate this particular dispute from Sony?

15 A I haven't.

16 Q If you were aware of this dispute would
17 you have still included it on Exhibit A of your
18 declaration?

19 MR. FEINSTEIN: Objection.

20 A I probably would not have just taken
21 this email exchange at face value without having had
22 some further communication and investigation on my
23 own.

24 BY MS. CHANG:

25 Q What would you have done to investigate?

1 A Well, I think I did originally try to
2 follow up with Tim and Alan on all the chargebacks.
3 But, I hit a brick wall there. So, I would have been
4 looking to them or someone at Sony to further
5 elaborate on what is meant by did not meet VIR
6 requirements. That would have been my initial
7 question. Depending upon the answer, that would
8 determine my next step.

9 Q If you -- I'll move on.

10 A Okay.

11 MS. CHANG: Will you please mark this as
12 Sony Exhibit 13?

13

14 (A 15-page photostatic copy of email
15 exchange and attachment, Bates Stamp
16 CCLT00101510-00101511, with attachments,
17 was marked Sony Exhibit Number 13.)

18

19 BY MS. CHANG:

20 Q This is CCLT-101510 to 101511. This is
21 an email dated March 3rd, 2009, and it includes the
22 attachment to the email. Have you ever seen this
23 document before?

24 A I was copied on it, so in theory. But,
25 I don't necessarily remember it.

1 Q The email itself is from Greg Lambert to
2 John Kelly?

3 A Yes.

4 Q And it says "Brandi asked that I forward
5 you a list of vendor denials to this point." So,
6 looking at the attachment, which is CCLT-101511,
7 looking at the fourth item down, you see Chargeback
8 96847, right?

9 A Yes.

10 Q And do you see a column, it's second
11 from the right, it says reason for denial?

12 A Yes.

13 Q And do you see how it says did not meet
14 VIR requirements?

15 A Yes.

16 Q So, this document is a Circuit City
17 record; is that right?

18 A It appears to be.

19 Q Do you know whether the dispute was
20 resolved? I see that there's reason for denial which
21 means Sony disputed it. Do you know if that was
22 resolved?

23 A I don't. I can see from reading the
24 context of this email that this was being sent, in
25 theory I assume so that the folks left in the

1 merchandising department could work with -- it's not
2 just Sony. There's like tons of vendors on here. To
3 work with them to try to work through any disputes.
4 But, I don't know the -- or at least I don't recall
5 the outcome of each of them.

6 Q But, this chargeback obviously is still
7 included on Exhibit A?

8 A Yes.

9 MS. CHANG: Will you please mark this as
10 Sony Exhibit 14?

11

12 (A seven-page photostatic copy of a
13 vendor package for CB Number 98681,
14 Bates Stamp CCLT040447-040453, was
15 marked Sony Exhibit Number 14.)

16

17 BY MS. CHANG:

18 Q And the Bates range is CCLT-40447 to
19 40453. Can you just take a look through the document
20 and let me know what this compilation of papers is?

21 A It's a vendor package.

22 Q What is it a vendor package for?

23 A Chargeback 98681.

24 Q Do you have -- turning to Page 7 of what
25 we have marked as Page 7 of Exhibit A to your

1 declaration, can you find the line for 98681?

2 A Yes.

3 Q It's near the top kind of. It's for
4 400,000. Do you see it?

5 A Yes.

6 Q Do you have personal knowledge as to
7 whether Circuit City actually met the requirements for
8 this particular chargeback?

9 A My understanding is that they committed
10 to the display allowance according to this letter in
11 the back. I mean, that's the extent of my knowledge.
12 They committed to it, so.

13 Q And looking at the confirming letter
14 which is on Page 40449, do you see at the end of the
15 first paragraph it says, "These funds are for final
16 payment on Z series and Blu-ray endcap that was agreed
17 to be placed through February of 2009"?

18 A Yes.

19 Q And do you see that the date of the
20 confirming letter is January 26th, 2009?

21 A Yes.

22 Q Could Circuit City have fulfilled its
23 requirements to keep an endcap in stores through
24 February, 2009 -- sorry. That's a really long
25 question.

1 A That's okay.

2 Q So, it appears from this confirming
3 letter that the program from Sony requires placement
4 of an endcap in stores through February of 2009,
5 right?

6 A Well, let me look back at what the
7 commitment says. Yes, it says on agreement to keep
8 the endcap in place from July, 2008, through February,
9 2009.

10 Q What are you reading from just for the
11 record?

12 A CCLT040453.

13 Q What is that page? That page appears to
14 be part of a document. What document is that?

15 A It's a program offering.

16 Q From?

17 A Sony.

18 Q To Circuit City?

19 A Yes.

20 Q So, what's your understanding of Circuit
21 City's obligation with respect to this endcap?

22 A To have the endcap in its stores from
23 January, 2008, through 2009.

24 Q I'm sorry, July, 2008?

25 A I'm sorry what did I say, January?

1 Sorry. Yes, July.

2 Q July, 2008, through February of 2009?

3 A Yes.

4 Q So, my question, what I'm getting at is
5 this confirming letter is actually dated January 26th
6 of 2009?

7 A Yes.

8 Q So, how is it possible -- I just didn't
9 understand how it was possible for Circuit City to
10 claim the funding for keeping an endcap through
11 February, 2009, but they're claiming it a month
12 beforehand.

13 A Sure.

14 Q Do you have any insight as to that?

15 A I don't. Other than the fact that this
16 was post-liquidation and perhaps -- it says the buyer
17 is George Ross. But, we knew him at Circuit City as
18 Skip. Skip may have had some insight as to when the
19 endcaps were going to remain in place or how long they
20 were going to remain in place and wanted to get the
21 billing completed. We announced liquidation in
22 January. So, at some point obviously stores were
23 starting to close. And, you know, that's all that I
24 would be able to say to that. As far as I know he
25 would have been just ahead of the game it looks like.

1 Q Have you ever discussed this particular
2 chargeback with Skip Ross?

3 A No.

4 Q So, do you have any knowledge as to
5 whether Circuit City actually kept endcaps in stores
6 through February of 2009?

7 A In general we did. For me to be able to
8 say whether we had this particular endcap in place
9 through -- did you just say January or February?

10 Q February, 2009.

11 A I couldn't say for sure for the specific
12 one. But, I know that endcaps were in place. They
13 were in place till the very end.

14 Q Actually going back to the program
15 letter that you were reading from but reading from a
16 different page.

17 A Sure.

18 Q Because actually I think that section
19 begins on the page before, which is Page 40452.

20 A Yes.

21 Q Do you see how it says "Sony will
22 provide \$1 million in MDF funding to support an endcap
23 display in at least 650 Circuit City stores." Do you
24 know whether Circuit City had at least 650 stores open
25 through February of 2009?

1 A I don't recall the exact number of
2 stores. I know that there were some store closings as
3 early as November of 2008. But, I don't remember the
4 split. You know, how many remained open after that I
5 don't recall specifically. I could find out.

6 Q Okay. How many stores did Circuit City
7 have open let's say before the petition was filed?

8 A It was over 700. But, I don't remember
9 the exact number.

10 Q Was it under a thousand?

11 A Yes.

12 Q Was it more like under 800 too?

13 A Yeah, I think it was between 750 and 8.

14 Q And can you estimate, and if you can't
15 it's okay, it's just to the best of your knowledge,
16 estimate the number of stores that were still open by
17 the time Circuit City announced its liquidation?

18 A I can't. Because I don't remember how
19 many we closed in November. It was in the 100 range,
20 but I don't know the exact number. I don't remember.

21 Q Did Circuit City keep closing stores
22 between the November when about 100 shut down all the
23 way through the announcement of liquidation?

24 A No. It was one big kind of shutdown.
25 At least the announcing of closing. How they actually

1 closed I don't recall, you know, the timing. But, the
2 closure announcement happened in November. The dates
3 of closing of that hundredish stores I don't remember.

4 Q And then was there another big tranche
5 of stores that were closed after the announcement of
6 liquidation?

7 A Well, they closed as they liquidated.
8 When everything was gone, it closed. But, everything
9 was closed sometime in March of 2009.

10 Q That's when all the stores -- by that
11 time all the stores were gone, right?

12 A Yes.

13 Q But, does the Trust have data as to
14 exactly how many stores were open -- I'm sorry, it
15 would really be does the Trust have data as to when
16 each of its stores closed between November and March,
17 November, 2008, and March of 2009?

18 A We should, yes.

19 Q All right. Turning past Page 7 of the
20 chargebacks, you have a whole section of billbacks.
21 So, I just want to ask a couple questions about those.
22 Actually, no. We can go to the very front of Exhibit
23 A. It's even better. You have a nice summary called
24 AR summary. So, we'll just look at that. Under
25 billbacks, I see that there's \$973,342.86. And this

1 is the amount of billbacks that Circuit City is
2 claiming, right?

3 A Yes.

4 Q Do you have any personal knowledge as to
5 whether Circuit City actually met the requirements to
6 earn these billbacks?

7 A Well, for billbacks they are typically
8 an over-arching program. So, it's based on purchases.
9 And we purchased the goods. So, I would say yes, we
10 were entitled to the billback.

11 Q Are you familiar with the amount of
12 money that Sony committed for these billbacks?

13 A It's in the package and in the binders
14 that I provided. I don't recall the specific details
15 of this.

16 Q Sure. I understand.

17 Do you have personal knowledge as to
18 whether after Circuit City claimed these \$973,000 in
19 billbacks, whether Sony agreed that Circuit City had
20 earned that amount in billbacks?

21 A At my last deposition I believe your
22 counterpart put some document in front of me that at
23 least alluded to the fact that there was some question
24 as to the dollar amount. But, outside of that, no.

25 Q Actually I am not here to hide the ball.

1 I'll show you that document.

2 A You can show it to me again.

3 Q It's what was previously marked as Sony
4 Exhibit Number 8. Before Mr. Goldwater showed you
5 this document had you ever seen it before?

6 A I don't think so. I mean, I don't
7 recall seeing it.

8 Q So, is it fair to say you had no
9 personal knowledge that Sony actually disputed this
10 particular claim?

11 A Correct.

12 Q And fair to say you haven't done
13 anything to investigate the dispute that Sony had?

14 A I don't think that I can just from this
15 document. I mean, I remembered seeing this document.
16 It certainly triggered in my mind what is this about.
17 But, again, typically there would be a lot of follow
18 up and back and forth communication to better
19 understand. When I just read this, this doesn't
20 necessarily -- wouldn't lead me to believe that
21 they're correct without having some follow-up.

22 Q What kind of follow-up could you do now
23 to determine whether or not Sony's dispute is
24 well-founded?

25 A I need to probably re-read this. But, I

1 seem to remember that they indicated that they had
2 already received claims. So, my first question would
3 be what are those claims. Show me the claims you're
4 talking about that you indicate that you already
5 received for the same dollar amount. Because I don't
6 show that in my records. And then hopefully that
7 would trigger something one way or the other.

8 MS. CHANG: Mark this as Exhibit 15.

9

10 (An eight-page photostatic copy of a
11 vendor package for CB Number 98473,
12 Bates Number CCLT040384-040391, was
13 marked Sony Exhibit Number 15.)

14

15 BY MS. CHANG:

16 Q This is Bates range CCLT-40384 to 40391.
17 From your cruise through these pages what does this
18 appear to be?

19 A Looks like the vendor package for
20 Chargeback 98473.

21 Q Okay. And this chargeback, if you could
22 look with me on Page 7 of your Exhibit A, it's listed
23 there. 98473, it's the third one down in the amount
24 of \$229,560. Do you have any personal knowledge as to
25 whether Circuit City met the requirements for this

1 particular chargeback?

2 A Only what's included in the vendor
3 package.

4 Q Can you look at Page 40386? It's the
5 confirming letter.

6 A Sure.

7 Q Do you see in the first paragraph it
8 says these funds are for \$40 TC on certain models from
9 1-11 to 1-31. What's a TC?

10 A Trailing credit.

11 Q And so how -- what would you understand
12 this offer to mean?

13 A \$40 per unit sold of those two units
14 specified from January 11th through January 31st.

15 Q Can you turn please to Pages 40389 to
16 40391. It's actually a three-page email thread.

17 A Sure.

18 Q Running from January 12, 2009, to
19 January 14, 2009. And if you could turn to the
20 earliest email in time. So, it's actually on Page
21 40391.

22 A Yes.

23 Q This is an email from Leticia Bergin at
24 Sony to Ann Saulsbury at Circuit City. Who is Ann
25 Saulsbury?

1 A She worked in merchandising.

2 Q And do you see on the very last page

3 here it looks like Leticia Bergin is offering what

4 she's calling transition support for the two models

5 listed on the confirming letter, and she says there's

6 \$40 in trailing credit per unit on net sales during

7 the January 11 to January 31, 2009, time period. Do

8 you see the middle where she says, "Note that there

9 are some restrictions being placed on these funds.

10 Two primary issues of concern to Sony are as follows.

11 Number 1, Circuit City ownership may change. And

12 Number 2, Sony needs all assurances that Circuit City

13 will put forth their best efforts to transition these

14 existing two models and will place orders, slash,

15 accept delivery of the following three models by month

16 end.

17 A Yes.

18 Q And the month end -- this email is dated

19 January 12th, 2009, so month end must be end of

20 January of 2009, right?

21 A That's how I would interpret it.

22 Q Are you aware of whether Circuit City

23 changed ownership or remained a going concern at any

24 point after this email was written?

25 MR. FEINSTEIN: Objection.

1 A Changed ownership? No.

2 BY MS. CHANG:

3 Q Did Circuit City remain a going concern
4 after this email was written?

5 A When was the email written?

6 MR. FEINSTEIN: Objection.

7 A January 12th? Yes.

8 BY MS. CHANG:

9 Q Until when?

10 A Well, we announced liquidation on
11 January 16th. But, we did not fully liquidate until
12 March of 2009.

13 Q Do you know, are you personally aware of
14 whether Circuit City accepted -- placed orders and
15 accepted delivery for the three models listed in
16 Leticia Bergin's January 12th, 2009, email?

17 A I'm not. But, I certainly could find
18 out.

19 Q Okay. Assuming, let's just assume, that
20 Circuit City was not able to accept these three models
21 by the end of January, 2009. Is it your understanding
22 that Sony would then be entitled to withdraw funding
23 for this chargeback?

24 MR. FEINSTEIN: Objection.

25 A I'm not sure to be honest with you.

1 BY MS. CHANG:

2 Q Based on this email?

3 A I mean, I think definitely based on this
4 email I could see why they would dispute it. But,
5 again, I would be going to probably Ann Saulsbury to
6 see if there was additional communication or what the
7 more specific situation was.

8 Q Besides the documents in the vendor
9 package though have you seen any other documents
10 related to this particular chargeback?

11 A Not that I recall, no.

12 MS. CHANG: Okay. Mark this, please, as
13 Sony Exhibit 16.

14

15 (A ten-page photostatic copy of a
16 vendor package for CB Number 97666,
17 Bates Stamp CCLT030017-030026, was
18 marked Sony Exhibit Number 16.)

19

20 BY MS. CHANG:

21 Q This is CCLT-30017 to 30026. And if you
22 could please take a look through and let me know what
23 this document is.

24 A It's a vendor package for Chargeback
25 97666.

1 Q Turning to Page 5 of Exhibit A of your
2 declaration.

3 A Uh-huh. (Indicating affirmative
4 response.)

5 Q This is about halfway down the page. Do
6 you see the chargeback line for 97666 in the amount of
7 \$635,869.50?

8 A Yes.

9 Q Do you have personal knowledge as to
10 whether Circuit City met the requirements for this
11 particular chargeback?

12 A Nothing outside of what's in this
13 document, which has an email from Jim O'Keefe at Sony
14 with I guess an attachment as to what he felt were the
15 appropriate pricing amounts.

16 Q Turning to the confirming letter which
17 is Page 30019, do you see that this is a claim for the
18 635,000 and it's for price protection for certain
19 models effective December 2nd, 2008?

20 A Yes.

21 MS. CHANG: If you could please mark this
22 as Sony Exhibit 17.

23

24 (A one-page email Bates Stamp)

25 SEL00000850 was marked Sony Exhibit

1 Number 17.)

2

3 BY MS. CHANG:

4 Q And this is SEL00000850. This is an
5 email from Marie Dorey to Susan Wilburn and Dana
6 Griffin. Who are Susan Wilburn and Dana Griffin at
7 Circuit City?

8 A They were part of the Vendor Funded
9 Accounting Group. Susan was a supervisor and Dana was
10 in a clerical role. She would have been responsible
11 for billing the vendor.

12 Q And do you see on this email, it's dated
13 January 14th, 2009, that Marie Dorey is actually
14 writing about the same chargeback that we were
15 previously discussing, and that's 97666?

16 A Yes.

17 MR. FEINSTEIN: Objection.

18 BY MS. CHANG:

19 Q Do you see that she, Marie Dorey, is
20 saying after review of this claim a portion of this is
21 not valid. And later she says records show they were
22 no purchases of this model from 11-10 to 12-2;
23 therefore, not entitled to this part of the claim.
24 Have you ever seen this email?

25 A Not specifically, no.

1 Q So, are you aware that Sony disputes
2 this particular chargeback?

3 MR. FEINSTEIN: Objection.

4 A Through the production document that was
5 the post-petition I guess like an internal
6 reconciliation, I believe I recall that this one and,
7 in fact, I just looked it up in here, in Exhibit D,
8 for the same chargeback it says that it needs a
9 revision. And says basically the exact same notation
10 as what's in this email.

11 BY MS. CHANG:

12 Q Can you tell us just for the record what
13 page you're looking at when you're referencing?

14 A It says Exhibit D, Page 9 of 14.

15 Q And this is Exhibit D to the Fose
16 declaration, right?

17 A Correct. Yes.

18 Q So, in Exhibit D on Page 9 of your
19 declaration you're saying that you see this same
20 chargeback listed as needing more information?

21 A Yes.

22 Q Did you do anything to investigate -- or
23 did you do anything to gather more information about
24 this particular chargeback?

25 A No.

1 Q Do you consider this chargeback to be
2 valid even though Sony says it needs more
3 information -- or, I'm sorry, that it should be
4 revised?

5 MR. FEINSTEIN: Objection.

6 A Not without further understanding of --
7 I've never known a price protection to have this type
8 of verbiage as far as there where no purchases from
9 11-10 through 12-2. A price protection generally
10 speaks to how much inventory you have on hand and
11 future purchases. So, I have never seen a dispute nor
12 have we ever run a calculation of a price protection
13 that did a lookback at purchases over a specific
14 period of time.

15 BY MS. CHANG:

16 Q So, I want to make sure I understand
17 correctly on price protection. Can you give me an
18 example of how price protection would work? Let's
19 just take, for example -- let's just take this for
20 example. There's a Sony model price protection. I
21 see it's effective as of a certain date, December 2nd.
22 So, from your perspective in your experience, how does
23 price protection work? What does this mean?

24 A It would mean whatever inventory we have
25 on hand on that effective date, so in this example

1 December 2nd, you basically would look into the
2 system, how many units do we have on hand and at what
3 cost.

4 Q As in what cost is what did Circuit City
5 pay for it?

6 A Right, as in the invoice cost. So, we
7 can, if you want -- do you want to just look at this
8 first line?

9 Q Sure.

10 A CCLT-030020.

11 Q Okay.

12 A There's a line that says price
13 protection for, and then under that there's a class
14 217 then Sony KDL46, it's either 54 or \$4, 100.

15 Q Okay.

16 A Old invoice cost, that would be what it
17 was in our system previously.

18 Q This is what Circuit City paid for?

19 A It's what was invoiced for it. So,
20 theoretically. The new invoice cost, so that would be
21 what the price protection amount is for. The
22 difference between the two, which is this cost
23 difference, that's in theory what Sony owes Circuit
24 City per unit.

25 Q I'm confused.

1 A Okay.

2 Q So, you're saying this means Circuit
3 City was invoiced at \$1207?

4 A Correct.

5 Q For pieces that are sitting in its
6 warehouse as of December 2nd?

7 A Correct.

8 Q Has Circuit City already paid for those?

9 A In theory. You can't tell that from
10 this document.

11 Q But, in theory Circuit City has already
12 paid. I'm Circuit City, I've already paid for all my
13 goods. Now, there's a new invoice cost. Why does
14 that matter to me with respect to units that I've
15 already paid for?

16 A Because that's what a price protection
17 is. It says I'm going to start selling you this
18 product effective on this date at this amount. And
19 I'm giving you price protection; i.e., I'm protecting
20 all the inventory you've already bought from me at
21 this higher amount. At this new cost. So, maybe this
22 is too complicated. I can make it more simple. Let's
23 say we bought an item for \$150. And then on December
24 2nd they give us protection at 125. That means going
25 forward, from 12-2 forward every new item I buy would

1 be 125. Every item currently in my inventory that I
2 bought at 150, you're going to give me \$25 for each of
3 those units.

4 Q I see. Okay. And does it matter -- for
5 the items currently in your inventory on December 2nd
6 does it matter when you bought them?

7 A Not to my knowledge, no. And that would
8 be my issue with that comment.

9 Q I see. Okay. That makes sense. Thank
10 you.

11 A Sure.

12 (Off the record in place.)

13 MS. CHANG: Could I please have this
14 marked as Exhibit 18?

15
16 (A ten-page photostatic copy of a
17 vendor package for CB Number 98256,
18 Bates Stamp CCLT040183-040192, was
19 marked Sony Exhibit Number 18.)

20

21 BY MS. CHANG:

22 Q And same as with the others, please take
23 a page-through and let me know what this is.

24 A It appears to be the vendor package for
25 Chargeback 98256.

1 Q And could we look at Page 6 in Exhibit
2 A? Page 6 of the chargebacks in Exhibit A of your
3 declaration.

4 A Sure.

5 Q Let's go to this line. 98256. It's
6 towards the bottom. See it's for \$386,790?

7 A Yes.

8 Q And see it's for sell through support
9 2/1 to 2/7, DI-08-92. Do you know the significance of
10 DI-08-92?

11 A My understanding is that that's a Sony
12 reference to a document. And it may be attached here.
13 Yes. It's CCLT040189.

14 Q Okay. That appears to be a sales news.
15 Oh, no, it doesn't say sales news. It's a program
16 letter?

17 A Right.

18 Q And sorry, I didn't mention that Exhibit
19 18 is CCLT-40183 to 40192.

20 With reference to that line item on
21 Exhibit A, do you have personal knowledge as to
22 whether Circuit City met the requirements for that
23 chargeback?

24 A Nothing outside of what's in this, in
25 the document, vendor package for 98256.

1 Q Do you have personal knowledge as to
2 whether this particular chargeback was correctly
3 calculated?

4 A It appears to be correctly calculated,
5 because in the VMA package, the part -- sorry,
6 starting on 040186, it indicates the sales from
7 February 1st through February 7th. Let's see.
8 Actually it looks like it says it's an estimate, but
9 then it goes on to have the detail behind it.

10 Q And you're referencing Page 40187,
11 right?

12 A Yes.

13 Q So, looking on Page --

14 A And then again 40188.

15 Q Okay. Sure. So, we can -- maybe let's
16 look at 40188 because it's larger.

17 A Sure.

18 Q I think they say the same thing.

19 So, I just want to make sure I
20 understand this correctly. We have a bunch of Sony
21 models. I think they're cameras but I could be wrong.
22 The quantity, is that -- well, I'll just ask you.

23 What does quantity refer to?

24 A That would be the quantity sold.

25 Q And what does amount per unit refer to?

1 A That should be the commitment amounts of
2 trailing credits, normally a dollar amount per unit.

3 Q And the chargeback amount, what is that?

4 A That's just the amount per unit times
5 the quantity.

6 Q And then together when we add up the
7 quantity times the amount per unit for each of these
8 models we get to the grand total of the chargeback
9 amount being claimed, right?

10 A Correct.

11 Q Turning to the program letter which you
12 just referenced, it begins on Page 40189.

13 A Yes.

14 Q I want to direct your attention to the
15 second page of the program letter. And I'm going to
16 direct your attention to the reference to February 1
17 to February 7, because it looks like there's different
18 program periods and then the one that -- the program
19 period at issue with this chargeback is February 1 to
20 February 7. Okay. So, let's just pick one out of the
21 hat. And let's look at Model W170. It's actually the
22 last line item in the February 1 to February 7 time
23 period.

24 A Yes.

25 Q Do you see that it's a \$50 instant

1 rebate offer amount per unit?

2 A Yes.

3 Q And what is an instant -- well, do you
4 have any knowledge as to how instant rebate offers
5 worked with respect to these programs or how they
6 related to trailing credits?

7 A In general, yes. I'm just trying to
8 refresh my memory on this particular one.

9 Q Take your time.

10 A Okay. So, I believe if memory serves
11 me, any customer purchase during this period of time
12 for the units indicated in that February 1st through
13 February 7th would be eligible for this per unit
14 dollar amount.

15 Q So, 50 -- so, for this --

16 A In this, yeah. Sorry.

17 Q For Model 170, for example, if I'm
18 understanding you correctly, a customer who purchases
19 that model during the February 1 to 7 time period, the
20 customer gets \$50 off; is that right?

21 A Well, Circuit City is getting reimbursed
22 \$50 per unit.

23 Q Then --

24 A Sony's not committing \$50 per unit to
25 the customer. It's to Circuit City.

1 Q Then can you turn to Page 40191?

2 A Sure.

3 Q And let's look at the same time period
4 of February 1 to February 7. And let's look at the
5 same model just so that we're all on the same page.

6 A Sure.

7 Q And this is \$40, right?

8 A Yes.

9 Q So, what's the difference between the
10 instant rebate offer and the trailing credit amount
11 then?

12 A Instant rebate is a customer rebate.

13 But, it's not Sony paying to the customer directly.

14 It's Sony still pays to Circuit City. That was I
15 think the clarifying point I was trying to make
16 earlier. And a rebate would be where Circuit City
17 offers a rebate to the customer where as a trailing
18 credit we don't have to offer any rebate to the
19 customer, we're still going to get X dollars per unit.

20 Q So, does that mean that for each unit
21 that Circuit City sells to a customer they get \$90?
22 I'm confused.

23 A Well, I have to read all these other
24 paragraphs, but a unit during a period of time can
25 qualify for more than one program generally speaking.

1 So, yes. If Circuit City sold a unit and they were
2 eligible for a trailing credit and at the same time
3 had an instant rebate, then, yes, they would be
4 eligible for both.

5 Q Okay. It says here at the bottom of
6 40189 that in order to receive trailing credits under
7 this program --

8 A Yes.

9 Q -- in addition to all other requirements
10 set forth in this document, participating dealers,
11 which I take is Circuit City, must provide -- Circuit
12 City must provide the following instant rebate offer
13 throughout the program period. So, Circuit City is
14 providing the instant rebate. Doesn't that mean that
15 Circuit City is providing the instant rebate to its
16 customers of \$50 and in return for every time they do
17 that, Sony will give them a trailing credit of \$40?

18 MR. FEINSTEIN: Objection.

19 A Yes, Circuit City is providing an
20 instant rebate. That's what I think this says.
21 Customers purchasing any of the following models will
22 receive the corresponding instant rebate. And they
23 are also getting a trailing credit. Circuit City is
24 getting a trailing credit.

25

1 BY MS. CHANG:

2 Q Right. Circuit City is getting the
3 trailing credit?

4 A Yes.

5 Q But, the customer -- isn't the customer
6 Circuit City's customer that's getting the instant
7 rebate offer?

8 A Yes. They are getting the instant
9 rebate offer. I'm sorry, I was trying to say earlier
10 that Sony is not paying the customer for an instant
11 rebate.

12 Q Right.

13 A Correct.

14 Q Sorry. This is my fault. I've muddied
15 that up. Can you summarize what this program means to
16 you?

17 A Wow.

18 Q Just summarize what you just said.

19 MR. FEINSTEIN: Objection.

20 A I'll try.

21 BY MS. CHANG:

22 Q I mean, because I was getting mixed up
23 as to who was paying who.

24 A Well, this -- maybe we need to back up.
25 Because this chargeback is specifically for sell

1 through support or trailing credit. And the dollar
2 amounts that are in here per unit refer back to the
3 trailing credit that we discussed on Page, let's see,
4 40191.

5 Q Right.

6 A Okay. I guess maybe I don't understand
7 what your question is.

8 Q So, my question is under this program,
9 what does Circuit City -- what does Sony owe to
10 Circuit City? Does it owe the trailing credit amount
11 or does it owe the instant rebate amount?

12 MR. FEINSTEIN: Objection.

13 A Under this program I believe they owe
14 both.

15 BY MS. CHANG:

16 Q Okay. All right. That's fine.

17 Can you turn to Page 40192? In the same
18 Sony Exhibit 18.

19 A Would you say that again? Sorry.

20 Q So, in Sony Exhibit 18, which is
21 Chargeback 98256 --

22 A Okay.

23 Q -- just go to the very last page. Which
24 is Bates Number CCLT-40192.

25 A Yes.

1 Q Do you see at the very top it says that
2 claims to Sony must include the following data.
3 Number 1 is sell through. Number 2 is proof that IRO
4 was provided to various models above customers
5 throughout the program period. And a debit memo.
6 Does this vendor package include sell through of
7 product?

8 A Yes.

9 Q Where is that?

10 A That's 40188.

11 Q Okay. So, you're saying the sell
12 through is reflected in the quantity listed?

13 A Yes.

14 Q And in your view is it satisfactory that
15 Circuit City provided the bottom line quantity rather
16 than the dates on which each model was sold?

17 A No, it's completely consistent with how
18 we've provided the data throughout the relationship.

19 Q And is there proof that IRO was provided
20 to various models above customers?

21 A Various models above customers.

22 Q I think it's missing a word, but.

23 A Clearly.

24 Q Proof that the --

25 A I'm not sure I even understand that

1 sentence.

2 Q Why don't we just take the beginning?

3 Does it include proof that the instant rebate offer
4 was provided?

5 A I don't see it in this package.

6 Q Does this package include a debit memo
7 for the total trailing credit amount?

8 A Circuit City didn't typically provide
9 what I would call debit memos. But, this -- we didn't
10 label them as such, but you could consider any of this
11 to be a debit memo. It has the full amount that was
12 calculated on the chargeback due to Circuit City from
13 Sony, same as the next page 040186 from VMA. This is
14 the typical information that would have been sent.

15 Q Okay. But, this particular vendor
16 package does not include proof that the IRO was
17 provided?

18 A I don't see it in here. At least in
19 these documents. It doesn't mean that it wasn't
20 submitted in some other form, email communication, I'm
21 not sure.

22 MS. CHANG: Let's mark this as Sony
23 Exhibit 19.

24

25 (An 11-page photostatic copy of a

1 vendor package for CB Number 98258,
2 Bates Stamp CCLT040193-040203, was
3 marked Sony Exhibit Number 19.)

4

5 BY MS. CHANG:

6 Q And take a look at that and let me know
7 what it is, please.

8 A Looks like a vendor package for
9 Chargeback 98258.

10 Q And turning to the confirming letter
11 which is Page 40195, it says these funds are for sell
12 through support February 8 to February 21, DI-08-92.
13 What is DI-08-92?

14 A It refers to the program letter that's
15 in the back of the package starting at CCLT040200.

16 Q And just as with the previous program
17 that we looked at, let's turn to the very last page of
18 the program which is 40203. See Number 2, the second
19 requirement is proof that the IRO, again that's the
20 instant rebate offer, was provided. Is that anywhere
21 in this chargeback vendor package?

22 A I don't see it, no.

23 Q And do you see further on the same page
24 I was reading from, please note that any deviation
25 from these terms and conditions will result in Sony's

1 refusal to pay trailing credits. Is it your
2 understanding that if -- sorry, can I rephrase that?

3 You had said before that you believed
4 each of the line items on Exhibit A was accurate
5 because you had reviewed the vendor package and
6 determined that all the requirements -- that Circuit
7 City had met all requirements required to earn each
8 particular chargeback, right?

9 A Correct.

10 Q So, having looked at this vendor package
11 again and seeing that particular requirement, would
12 you agree that Circuit City actually has not met the
13 requirements under this particular program for this
14 particular chargeback?

15 A No. Because historically this is the
16 exact package that we sent to Sony for trailing
17 credits. And I have tons of examples where they did
18 not dispute and allowed Circuit City to deduct against
19 invoices with the exact same support.

20 Q So, in --

21 A With the same program language.

22 Q So, because -- is it fair to say it's
23 your view that because Sony didn't allow -- I'm sorry,
24 that because Sony allowed Circuit City to skip some of
25 the requirements before, that it's okay that Circuit

1 City skipped the requirement this time?

2 MR. FEINSTEIN: Objection.

3 A I'm not saying we skipped the
4 requirement. I'm just saying that I don't see it in
5 this package. So, what I'm saying is that this
6 package and similar packages have been submitted to
7 Sony and Sony has allowed us to successfully deduct
8 trailing credits with the same type of package. I
9 don't want to imply that something was skipped
10 because, as I said, it could have been submitted
11 outside of the package. There could have been
12 communication back and forth. Whoever this -- it says
13 Leticia but I know that they call her Tish. Tish
14 could have emailed someone to ask for additional
15 support which could have been provided or there may
16 have been something mutually agreed to outside of this
17 document where it wasn't necessary. They could have
18 been tracking the rebates on their own. Sony had
19 access to a lot of information when Circuit City was a
20 going concern, so.

21 BY MS. CHANG:

22 Q And if there was such email
23 communications that you're referencing that may exist,
24 would that have been produced to Sony as part of
25 discovery?

1 A Yes. We provided all email
2 communication.

3 MS. CHANG: Have this marked as Exhibit
4 20, please.

5

6 (A 12-page photostatic copy of a
7 vendor package for CB Number 94889,
8 Bates Stamp CCLT050209-050220, was
9 marked Sony Exhibit Number 20.)

10

11 BY MS. CHANG:

12 Q This is CCLT-50209-50220. What is this?

13 A A vendor package for Chargeback 94889.

14 Q Can we look together at the document
15 beginning 50214?

16 A Sure.

17 Q What does this appear to be?

18 A It's a program offering.

19 Q And what's the relevant period?

20 A August 31st, 2008, through September 6,
21 2008.

22 Q And what model TV does it refer to?

23 A There are two models. KDL52V4100.

24 COURT REPORTER: I'm sorry, 52 --

25 A Do you want me to name them out?

1 BY MS. CHANG:

2 Q Sure. At least for the TV model. Sure,
3 yes, just name both of the models. There's a TV model
4 and a home theater system.

5 A I'm going to be honest with you, I
6 wouldn't know which one of these is the TV. But, I
7 think it's --

8 Q It says TV model on the program letter.

9 A Okay. I'm sorry, I was looking at the
10 bottom under qualifying product. KDL52V4100.

11 Q And what's the relevant home theater
12 system model?

13 A DAVHDX576WF.

14 Q Now, turning two pages before to the
15 document 50212, this is I believe you said it was a
16 confirming letter; is that right?

17 A Yes.

18 Q Can you read the description in the
19 first paragraph? And you can read it to yourself.
20 And let me know if it matches the program that's
21 attached.

22 A Yes.

23 Q Sorry for all the flipping, but turning
24 back to the program, the second page of the program,
25 it's 50215, there in the second category it says claim

1 submission and payment. And according to this program
2 when do all claims have to be submitted to Sony for
3 this particular chargeback?

4 MR. FEINSTEIN: Objection.

5 A According to this program?

6 BY MS. CHANG:

7 Q Uh-huh. (Indicating affirmative
8 response.)

9 A It says December 6th, 2008.

10 Q And when was this vendor package
11 submitted to Sony?

12 A It appears from the confirming letter
13 January 29th, 2009.

14 Q So, did Circuit City submit this
15 chargeback by the program deadline?

16 MR. FEINSTEIN: Objection.

17 A Not according to this date on here.

18 BY MS. CHANG:

19 Q Do you have personal knowledge as to
20 when it was submitted?

21 A No.

22 Q Does this particular chargeback appear
23 in Exhibit A in your declaration?

24 It's on Page 1.

25 A Yes.

1 Q Last one. Exhibit 21.

2 MS. CHANG: Can you please mark this as
3 Exhibit 21?

4

5 (A seven-page photostatic copy of a
6 vendor package for CB Number 90772,
7 Bates Stamp CCLT050050-050056, was
8 marked Sony Exhibit Number 21.)

9

10 BY MS. CHANG:

11 Q And this is Bates range CCLT-50050 to
12 50056. What does this appear to be?

13 A Vendor package for Chargeback 90772.

14 Q And again on Page 1 of Exhibit A to your
15 declaration, this is the second item --

16 A Yes.

17 Q -- at the very top.

18 So, you see it on your exhibit?

19 A Yes.

20 Q Do you have personal knowledge as to
21 whether Circuit City met the requirements for this
22 particular chargeback?

23 A Not outside of this package.

24 Q Take a look at all the documents in the
25 package. And just let me know when you're done.

1 A Okay.

2 Q Is there a confirming letter in this
3 package?

4 A Not a letter. But, there's an email
5 that outlines what -- or multiple emails from Sony to
6 Circuit City that outline the commitment.

7 Q Are there any communications from
8 Circuit City to Sony to claim this chargeback?

9 A I don't understand the question.

10 Q Let me rephrase the question.

11 Do you have personal knowledge as to
12 whether this vendor package was ever submitted to
13 Sony?

14 A Ever? Absolutely it was.

15 Q Sorry. I'm sorry.

16 A Multiple times.

17 Q That's a great answer.

18 A It's a sore subject.

19 Q I mean, at the time that Circuit City
20 performed its obligations to earn this chargeback, or
21 at the time that Circuit City believed that it
22 performed its obligations to earn this chargeback. I
23 understand from your previous testimony that Circuit
24 City was to put together vendor packages and sent them
25 to Sony and that's how they claimed their -- that's

1 how they advised Sony that they had earned this
2 chargeback, right?

3 A Right. We provided the packages to
4 them. But, we systematically took the deduction
5 against the invoices.

6 Q Sure. I understand. So, with respect
7 to the vendor package for this particular chargeback,
8 where is the evidence that this was ever submitted to
9 Sony to claim that chargeback?

10 A It's going to be an email communication.

11 Q From who to who?

12 A From the biller to Sony.

13 Q And was that produced as part of the
14 Trustee's production?

15 A It should be. And I'm almost positive
16 it was produced back to us in Sony's production.

17 Q And you're saying what was produced was
18 an email from Circuit City transmitting this vendor
19 package?

20 A Or there was a billing memo that was in
21 Sony's production for this vendor package. And this
22 vendor package can only come from Circuit City.

23 Q Oh, I know that. I know that.
24 I have no further questions.

25 A Okay.

1 I further certify that I am neither related
2 to nor associated with any counsel or party to this
3 proceeding, nor otherwise interested in the event
4 thereof.

5 Given under my hand and notarial seal at
6 Richmond, Virginia, this 25th day of July, 2014.

7

8

9 Marion G. Whitlow - Notary Public
Commonwealth of Virginia at Large

10 Notary Registration Number 223323

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